

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MELANIE PETERSON,

Plaintiff,

VS.

**BANK OF AMERICA, N.A.,
AS SERVICER FOR
CITIMORTGAGE, INC.**

Defendant.

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Case No. 4:14CV152

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND
ORDER OF DISMISSAL**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On July 8, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Bank of America, N.A.'s First Amended Motion to Strike or in the Alternative Dismiss Plaintiff's First Amended Petition and Application for Temporary Injunction (Dkt. 12) be GRANTED in part and that Plaintiff's claims be dismissed without prejudice for want of prosecution for failure to comply with the court's orders to submit a joint Rule 26(f) report and for failure to file a response to Defendant's motion to dismiss.

The court has made a *de novo* review of the objections raised by Plaintiff (*see* Dkt. 21), as well as Defendant's response (*see* Dkt. 22), and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings

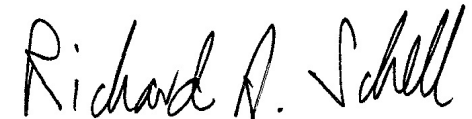
of the Magistrate Judge. The court further notes that Plaintiff has taken no action in the case since filing her July 18, 2014 objections and that she has still not complied with the orders of the Magistrate Judge regarding a joint Rule 26(f) report or a response to the motion to dismiss. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Bank of America, N.A.'s First Amended Motion to Strike or in the Alternative Dismiss Plaintiff's First Amended Petition and Application for Temporary Injunction (Dkt. 12) is GRANTED in part, and Plaintiff's claims are dismissed without prejudice for want of prosecution.¹

This matter shall be closed on the court's docket, and all costs shall be borne by the party incurring same.

IT IS SO ORDERED.

SIGNED this the 31st day of March, 2015.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

¹The court notes that Defendant's response to Plaintiff's objections requests a dismissal with prejudice. The record before the court does not reflect a clear record of delay or contumacious conduct by Plaintiff such that a dismissal with prejudice would be appropriate. *See Coleman v. Sweetin*, 745 F.3d 756, 766-67 (5th Cir. 2014). *See also Callip v. Harris Co. Child Welfare Dept.*, 757 F.2d 1513, 1520-21 (5th Cir. 1985).